

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NEHEMIAH KONG,

Plaintiffs,

vs.

TOWNE CENTER WEST I, LLC, a
Delaware Limited Liability Company;
TOWNE CENTER WEST II, LLC, a
Delaware Limited Liability Company;
SPRINT SPECTRUM, L.P., A Delaware
Limited Partnership; SPRINT
SPECTRUM HOLDING COMPANY,
LLC, a Delaware Limited Liability
Company, and Does 1-10,

Defendants.

CASE NO. 2:19-cv-00098-JLS-KS

DISCOVERY MATTER

**~~[PROPOSED]~~ ORDER APPROVING
STIPULATED PROTECTIVE
ORDER**

1 The Court, having reviewed and considered the Stipulated Protective Order
2 submitted by Plaintiff Nehemiah Kong and Defendants Towne Center West I, LLC,
3 Towne Center West II, LLC, Sprint Spectrum, L.P., and Sprint Spectrum Holding
4 Company, LLC (hereinafter referred to as the “Parties”), and good cause appearing
5 for the same, hereby APPROVES the Parties stipulation and adopts the stipulated
6 terms proposed by the Parties as the Order of this Court as set forth below:

7
8 **STIPULATED PROTECTIVE ORDER**

9 1. INTRODUCTION

10 A. PURPOSES AND LIMITATIONS

11 Discovery in this action is likely to involve production of confidential,
12 proprietary, or private information for which special protection from public
13 disclosure and from use for any purpose other than prosecuting this litigation may be
14 warranted. Accordingly, the parties hereby stipulate to and petition the Court to
15 enter the following Stipulated Protective Order. The parties acknowledge that this
16 Order does not confer blanket protections on all disclosures or responses to discovery
17 and that the protection it affords from public disclosure and use extends only to the
18 limited information or items that are entitled to confidential treatment under the
19 applicable legal principles. The parties further acknowledge, as set forth in Section
20 12.3, below, that this Stipulated Protective Order does not entitle them to file
21 confidential information under seal. Local Rule 79-5 sets forth the procedures that
22 must be followed and the standards that will be applied when a party seeks
23 permission from the Court to file material under seal.

24
25 B. GOOD CAUSE STATEMENT

26 Discovery in this action is likely to involve the production of valuable
27 commercial, financial, personal, and/or proprietary information for which special
28 protection from public disclosure and from use for any purpose than litigation of this

1 action is warranted. Such confidential and proprietary materials and information
2 consist of, among other things, confidential business or financial information,
3 information regarding confidential business practices, medical information, or other
4 confidential commercial information (including information implicating the privacy
5 rights of third parties) that is otherwise generally unavailable to the public or which
6 may be privileged or otherwise protected from disclosure under state or federal
7 statutes, court rules, case decisions, or common law. Accordingly, to expedite the
8 flow of information, to facilitate the prompt resolution of disputes over the
9 confidentiality of discovery materials, to adequately protect information the parties
10 are entitled to keep confidential, to ensure that the parties are permitted reasonable
11 necessary uses of such material in preparation for and in the conduct of trial, to
12 address their handling at the end of the litigation, and serve the ends of justice, a
13 protective order for such information is justified in this matter. It is the intent of the
14 parties that information will not be designated as confidential for tactical reasons and
15 that nothing be so designated without a good faith belief that it has been maintained
16 in a confidential, non-public manner, and there is good cause why it should not be
17 part of the public record of this case.

18 19 2. DEFINITIONS

20 2.1 Action: This pending federal lawsuit, styled as *Nehemiah Kong v.*
21 *Towne Center West I, LLC, et al.*, C.D. Cal. Case No. 2:19-cv-00098-JLS-KS.

22 2.2 Challenging Party: a Party or Non-Party that challenges the designation
23 of information or items under this Order.

24 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
25 how it is generated, stored or maintained) or tangible things that qualify for
26 protection under Federal Rule of Civil Procedure 26(c), and as specified above in the
27 Good Cause Statement.

28 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their

1 support staff).

2 2.5 Designating Party: a Party or Non-Party that designates information or
3 items that it produces in disclosures or in responses to discovery as
4 “CONFIDENTIAL.”

5 2.6 Disclosure or Discovery Material: all items or information, regardless of
6 the medium or manner in which it is generated, stored, or maintained (including,
7 among other things, testimony, transcripts, and tangible things), that are produced or
8 generated in disclosures or responses to discovery in this matter.

9 2.7 Expert: a person with specialized knowledge or experience in a matter
10 pertinent to the litigation who has been retained by a Party or its counsel to serve as
11 an expert witness or as a consultant in this Action.

12 2.8 House Counsel: attorneys who are employees of a party to this Action.
13 House Counsel does not include Outside Counsel of Record or any other outside
14 counsel.

15 2.9 Non-Party: any natural person, partnership, corporation, association, or
16 other legal entity not named as a party to this action.

17 2.10 Outside Counsel of Record: attorneys who are not employees of a party
18 to this Action but are retained to or advise a party to this Action and have appeared in
19 this Action on behalf of that party or are affiliated with a law firm which has
20 appeared on behalf of that party, and includes support staff.

21 2.11 Party: any party to this Action, including all of its officers, directors,
22 employees, consultants, retained experts, and Outside Counsel of Record (and their
23 support staffs).

24 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
25 Discovery Material in this Action.

26 2.13 Professional Vendors: persons or entities that provide litigation support
27 services (e.g., photocopying, videotaping, translating, preparing exhibits or
28

1 demonstrations, and organizing, storing, or retrieving data in any form or medium)
2 and their employees and subcontractors.

3 2.14 Protected Material: any Disclosure or Discovery Material that is
4 designated as “CONFIDENTIAL.”

5 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
6 from a Producing Party.

7
8 3. SCOPE

9 The protections conferred by this Stipulation and Order cover not only
10 Protected Material (as defined above), but also (1) any information copied or
11 extracted from Protected Material; (2) all copies, excerpts, summaries, or
12 compilations of Protected Material; and (3) any testimony, conversations, or
13 presentations by Parties or their Counsel that might reveal Protected Material.

14 Any use of Protected Material at trial shall be governed by the orders of the
15 trial judge. This Order does not govern the use of Protected Material at trial.

16
17 4. DURATION

18 Even after final disposition of this litigation, the confidentiality obligations
19 imposed by this Order shall remain in effect until a Designating Party agrees
20 otherwise in writing or a court order otherwise directs. Final disposition shall be
21 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
22 or without prejudice; and (2) final judgment herein after the completion and
23 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
24 including the time limits for filing any motions or applications for extension of time
25 pursuant to applicable law.

26
27 5. DESIGNATING PROTECTED MATERIAL

28 5.1 Exercise of Restraint and Care in Designating Material for Protection.

1 Each Party or Non-Party that designates information or items for protection under
2 this Order must take care to limit any such designation to specific material that
3 qualifies under the appropriate standards. The Designating Party must designate for
4 protection only those parts of material, documents, items, or oral or written
5 communications that qualify so that other portions of the material, documents, items,
6 or communications for which protection is not warranted are not swept unjustifiably
7 within the ambit of this Order.

8 Mass, indiscriminate, or routinized designations are prohibited. Designations
9 that are shown to be clearly unjustified or that have been made for an improper
10 purpose (e.g., to unnecessarily encumber the case development process or to impose
11 unnecessary expenses and burdens on other parties) may expose the Designating
12 Party to sanctions.

13 If it comes to a Designating Party's attention that information or items that it
14 designated for protection do not qualify for protection, that Designating Party must
15 promptly notify all other Parties that it is withdrawing the inapplicable designation.

16 5.2 Manner and Timing of Designations. Except as otherwise provided in
17 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
18 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
19 under this Order must be clearly so designated before the material is disclosed or
20 produced.

21 Designation in conformity with this Order requires:

22 (a) *for information in documentary form* (e.g., paper or electronic
23 documents, but excluding transcripts of depositions or other pretrial or trial
24 proceedings), that the Producing Party affix at a minimum, the legend
25 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
26 contains protected material. If only a portion or portions of the material on a page
27 qualifies for protection, the Producing Party also must clearly identify the protected
28 portion(s) (e.g., by making appropriate markings in the margins).

1 A Party or Non-Party that makes original documents available for inspection
2 need not designate them for protection until after the inspecting Party has indicated
3 which documents it would like copied and produced. During the inspection and
4 before the designation, all of the material made available for inspection shall be
5 deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents
6 it wants copied and produced, the Producing Party must determine which documents,
7 or portions thereof, qualify for protection under this Order. Then, before producing
8 the specified documents, the Producing Party must affix the “CONFIDENTIAL
9 legend” to each page that contains Protected Material. If only a portion or portions of
10 the material on a page qualifies for protection, the Producing Party also must clearly
11 identify the protected portion(s) (e.g., by making appropriate markings in the
12 margins).

13 (b) *for testimony given in depositions* that the Designating Party identify the
14 Disclosure or Discovery Material on the record, before the close of the deposition all
15 protected testimony.

16 (c) *for information produced in some form other than documentary and for*
17 *any other tangible items*, that the Producing Party affix in a prominent place on the
18 exterior of the container or containers in which the information is stored the legend
19 “CONFIDENTIAL.” If only a portion or portions of the information warrants
20 protection, the Producing Party, to the extent practicable, shall identify the protected
21 portion(s).

22 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
23 failure to designate qualified information or items does not, standing alone, waive the
24 Designating Party’s right to secure protection under this Order for such material.
25 Upon timely correction of a designation, the Receiving Party must make reasonable
26 efforts to assure that the material is treated in accordance with the provisions of this
27 Order.

1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
3 designation of confidentiality at any time that is consistent with the Court's
4 Scheduling Order.

5 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
6 resolution process under Local Rule 37.1, *et seq.*

7 6.3 Dispute Resolution. The burden of persuasion in any such challenge
8 proceeding shall be on the Designating Party. Frivolous challenges, and those made
9 for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens
10 on other parties) may expose the Challenging Party to sanctions. Unless the
11 Designating Party has waived or withdrawn the confidentiality designation, all parties
12 shall continue to afford the material in question the level of protection to which it is
13 entitled under the Producing Party's designation until the Court rules on the
14 challenge.

15
16 7. ACCESS TO AND USE OF PROTECTED MATERIAL

17 7.1 Basic Principles. A Receiving Party may use Protected Material that is
18 disclosed or produced by another Party or by a Non-Party in connection with this
19 Action only for prosecuting, defending, or attempting to settle this Action. Such
20 Protected Material may be disclosed only to the categories of persons and under the
21 conditions described in this Order. When the Action has been terminated, a Receiving
22 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

23 Protected Material must be stored and maintained by a Receiving Party at a
24 location and in a secure manner that ensures that access is limited to the persons
25 authorized under this Order.

26 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
27 otherwise ordered by the court or permitted in writing by the Designating Party, a
28 Receiving Party may disclose any information or item designated

1 “CONFIDENTIAL” only to:

2 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well
3 as employees of said Outside Counsel of Record to whom it is reasonably necessary
4 to disclose the information for this Action;

5 (b) the officers, directors, and employees (including House Counsel) of the
6 Receiving Party to whom disclosure is reasonably necessary for this Action;

7 (c) Experts (as defined in this Order) of the Receiving Party to whom
8 disclosure is reasonably necessary for this Action and who have signed the
9 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

10 (d) the court and its personnel;

11 (e) court reporters and their staff;

12 (f) professional jury or trial consultants, mock jurors, and Professional
13 Vendors to whom disclosure is reasonably necessary for this Action and who have
14 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

15 (g) the author or recipient of a document containing the information or a
16 custodian or other person who otherwise possessed or knew the information;

17 (h) during their depositions, witnesses, and attorneys for witnesses, in the
18 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
19 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will
20 not be permitted to keep any confidential information unless they sign the
21 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
22 agreed by the Designating Party or ordered by the court. Pages of transcribed
23 deposition testimony or exhibits to depositions that reveal Protected Material may be
24 separately bound by the court reporter and may not be disclosed to anyone except as
25 permitted under this Stipulated Protective Order; and

26 (i) any mediator or settlement officer, and their supporting personnel,
27 mutually agreed upon by any of the parties engaged in settlement discussions.

1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
2 OTHER LITIGATION

3 If a Party is served with a subpoena or a court order issued in other litigation
4 that compels disclosure of any information or items designated in this Action as
5 “CONFIDENTIAL,” that Party must:

6 (a) promptly notify in writing the Designating Party. Such notification shall
7 include a copy of the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order to
9 issue in the other litigation that some or all of the material covered by the subpoena
10 or order is subject to this Protective Order. Such notification shall include a copy of
11 this Stipulated Protective Order; and

12 (c) cooperate with respect to all reasonable procedures sought to be pursued
13 by the Designating Party whose Protected Material may be affected.

14 If the Designating Party timely seeks a protective order, the Party served with
15 the subpoena or court order shall not produce any information designated in this
16 action as “CONFIDENTIAL” before a determination by the court from which the
17 subpoena or order issued, unless the Party has obtained the Designating Party’s
18 permission. The Designating Party shall bear the burden and expense of seeking
19 protection in that court of its confidential material and nothing in these provisions
20 should be construed as authorizing or encouraging a Receiving Party in this Action to
21 disobey a lawful directive from another court.

22
23 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
24 PRODUCED IN THIS LITIGATION

25 (a) The terms of this Order are applicable to information produced by a
26 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
27 produced by Non-Parties in connection with this litigation is protected by the
28 remedies and relief provided by this Order. Nothing in these provisions should be

1 construed as prohibiting a Non-Party from seeking additional protections.

2 (b) In the event that a Party is required, by a valid discovery request, to
3 produce a Non-Party's confidential information in its possession, and the Party is
4 subject to an agreement with the Non-Party not to produce the Non-Party's
5 confidential information, then the Party shall:

6 (1) promptly notify in writing the Requesting Party and the Non-Party
7 that some or all of the information requested is subject to a confidentiality agreement
8 with a Non-Party;

9 (2) promptly provide the Non-Party with a copy of the Stipulated
10 Protective Order in this Action, the relevant discovery request(s), and a reasonably
11 specific description of the information requested; and

12 (3) make the information requested available for inspection by the
13 Non-Party, if requested.

14 (c) If the Non-Party fails to seek a protective order from this court within 14
15 days of receiving the notice and accompanying information, the Receiving Party may
16 produce the Non-Party's confidential information responsive to the discovery request.
17 If the Non-Party timely seeks a protective order, the Receiving Party shall not
18 produce any information in its possession or control that is subject to the
19 confidentiality agreement with the Non-Party before a determination by the court.
20 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
21 of seeking protection in this court of its Protected Material.

22
23 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

24 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
25 Protected Material to any person or in any circumstance not authorized under this
26 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
27 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
28 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or

1 persons to whom unauthorized disclosures were made of all the terms of this Order,
2 and (d) request such person or persons to execute the “Acknowledgment and
3 Agreement to Be Bound” that is attached hereto as Exhibit A.
4

5 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
6 PROTECTED MATERIAL

7 When a Producing Party gives notice to Receiving Parties that certain
8 inadvertently produced material is subject to a claim of privilege or other protection,
9 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
10 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
11 may be established in an e-discovery order that provides for production without prior
12 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
13 parties reach an agreement on the effect of disclosure of a communication or
14 information covered by the attorney-client privilege or work product protection, the
15 parties may incorporate their agreement in the stipulated protective order submitted
16 to the court.
17

18 12. MISCELLANEOUS

19 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
20 person to seek its modification by the Court in the future.

21 12.2 Right to Assert Other Objections. By stipulating to the entry of this
22 Protective Order no Party waives any right it otherwise would have to object to
23 disclosing or producing any information or item on any ground not addressed in this
24 Stipulated Protective Order. Similarly, no Party waives any right to object on any
25 ground to use in evidence of any of the material covered by this Protective Order.

26 12.3 Filing Protected Material. A Party that seeks to file under seal any
27 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
28 only be filed under seal pursuant to a court order authorizing the sealing of the

1 specific Protected Material at issue. If a Party's request to file Protected Material
2 under seal is denied by the court, then the Receiving Party may file the information in
3 the public record unless otherwise instructed by the court.
4

5 **13. FINAL DISPOSITION**

6 After the final disposition of this Action, as defined in paragraph 4, within 60
7 days of a written request by the Designating Party, each Receiving Party must return
8 all Protected Material to the Producing Party or destroy such material. As used in this
9 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
10 summaries, and any other format reproducing or capturing any of the Protected
11 Material. Whether the Protected Material is returned or destroyed, the Receiving
12 Party must submit a written certification to the Producing Party (and, if not the same
13 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
14 (by category, where appropriate) all the Protected Material that was returned or
15 destroyed and (2) affirms that the Receiving Party has not retained any copies,
16 abstracts, compilations, summaries or any other format reproducing or capturing any
17 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
18 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
19 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
20 reports, attorney work product, and consultant and expert work product, even if such
21 materials contain Protected Material. Any such archival copies that contain or
22 constitute Protected Material remain subject to this Protective Order as set forth in
23 Section 4 (DURATION).
24

25 ///

26 ///

27 ///

28 ///

1 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

2
3 DATED: February 4, 2020

CENTER FOR DISABILITY ACCESS

4
5 By: /s/ Bradley Smith
6 Bradley Smith, Esq.

7 Attorneys for Plaintiff Nehemiah Kong

8 DATED: February 4, 2020

**LAW OFFICES OF KENNETH I. GROSS &
ASSOCIATES**

10
11 By: /s/ Kenneth I. Gross
12 Kenneth I. Gross, Esq.

13 Attorneys for Defendants Towne Center
14 West I, LLC and Towne Center West II
LLC

15 DATED: February 4, 2020

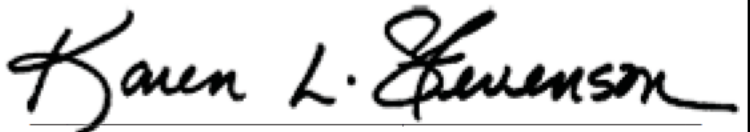
McGUIREWOODS LLP

16
17 By: /s/ Amy E. Beverlin
18 Matthew C. Kane, Esq.
Amy E. Beverlin, Esq.

19 Attorneys for Defendants
20 Sprint Spectrum, L.P. and Sprint Spectrum
Holding Company, LLC

21
22 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

23
24
25 Date: February 4, 2020



26 HONORABLE KAREN L. STEVENSON
27 UNITED STATES MAGISTRATE JUDGE
28

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name],
4 of _____ [print or type full address], declare
5 under penalty of perjury that I have read in its entirety and understand the Stipulated
6 Protective Order that was issued by the United States District Court for the Central
7 District of California on _____ [date] in the case of *Nehemiah Kong v.*
8 *Towne Center West I, LLC, et al.*, C.D. Cal. Case No. 2:19-cv-00098-JLS-KS.

9 I agree to comply with and to be bound by all the terms of this Stipulated
10 Protective Order and I understand and acknowledge that failure to so comply could
11 expose me to sanctions and punishment in the nature of contempt. I solemnly promise
12 that I will not disclose in any manner any information or item that is subject to this
13 Stipulated Protective Order to any person or entity except in strict compliance with
14 the provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court
16 for the Central District of California for the purpose of enforcing the terms of this
17 Stipulated Protective Order, even if such enforcement proceedings occur after
18 termination of this action. I hereby appoint _____ [print or type
19 full name] of _____ [print or type full address and
20 telephone number] as my California agent for service of process in connection with
21 this action or any proceedings related to enforcement of this Stipulated Protective
22 Order.

23
24 Date: _____

25 City and State where sworn and signed: _____

26
27 Printed name: _____

28 Signature: _____